



Federal Communications Commission  
Washington, D.C. 20554

APR 9 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE CLERK

The Honorable Carol Moseley-Braun  
United States Senator  
324 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Moseley-Braun:

Thank you for your inquiry on behalf of your constituents, Jeffrey Courson, Mahomet, Illinois, Mayor Jacqueline Gorell, Skokie, Illinois, Ray M. Boudreaux, Rantoul, Illinois, and Mark W. Damisch, Northbrook, Illinois, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in their communities. Your constituents' letters refer to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comment on a Petition for Further Notice of Proposed Rule Making filed by the National Association of Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comment on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your constituents' letters, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

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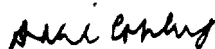
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At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



*for* Steven E. Weingarten  
Acting Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

cc: CWD  
Dockets (2)  
John Conwell  
j:\congress\9707329

CAROL MOSELEY-BRAUN  
ILLINOIS

COMMITTEES:  
BANKING, HOUSING, AND  
URBAN AFFAIRS  
FINANCE  
SPECIAL AGING

United States Senate  
WASHINGTON, DC 20510-1303

November 18, 1997

*MMB*  
*97-182*  
*11/22/97*

Ms. Judy Harris  
Director  
Federal Communications Commission  
Office of Legislative Affairs  
1919 M Street NW  
Washington, D.C. 20554

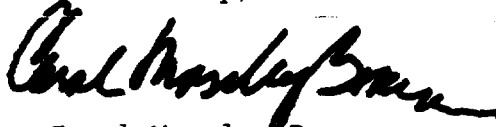
Dear Ms. Harris:

Enclosed is a number of letters I have received concerning the local zoning of local cellular telephone and broadcast towers.

Because of my desire to be responsive to all constituent communications, your prompt and attentive consideration of this matter is appreciated. Please send your findings along with the return of this correspondence to the attention of Mr. Matthew Henson.

Thank you in advance for your assistance.

Yours truly,



Carol Mosley Braun  
United States Senator

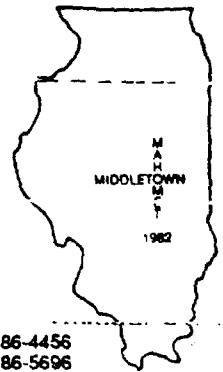
CMB:mh

# Village of Mahomet

P.O. BOX 259  
MAHOMET, ILLINOIS 61853

MIDDLETOWN 1832 • 1867 • RENAMED MAHOMET 1867 • INCORPORATED 1872

ADMINISTRATIVE BUILDING (217) 586-4456  
FAX (217) 586-5696



October 31, 1997

G9732 INTERNS

The Honorable Senator Carol Moseley-Braun  
U.S. Senate  
Washington, DC 20510

Senator Moseley-Braun:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

Cellular Towers – Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and

potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man - over 2,000 feet tall; taller than the Empire State Building. The FCC claims these changes are needed to all TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

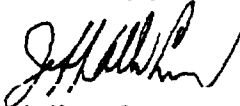
These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT-97-197, MM Docket 97-182 and DA 96-140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and

third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202 393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Very truly yours,



Jeffrey Courson  
Village President



Jacqueline Gorell  
Mayor

October 28, 1997

Honorable Carol Moseley-Braun  
230 S. Dearborn  
Suite 3900  
Chicago, Illinois 60604

GG732 TRANS 570

Dear Senator Moseley-Braun:

We are writing to you to ask your assistance in stopping the proposed rulemaking by the FCC that will preempt local zoning regulation of the location of cellular, radio and TV towers that was affirmed by the 1996 Telecommunications Act passed by Congress. Proposed rules which are in conflict with the Village's zoning authority are as follows:

Radio and TV Towers

The FCC has issued a proposed rule that would preempt local zoning of radio and TV towers by establishing an unrealistic period of 21 to 45 days for municipalities to act on any local permit. Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or violates local laws. All appeals of zoning and permit denials would go directly to the FCC, not to the local courts.

The Village of Skokie's zoning process takes 60 to 90 days to complete for all types of petitions. More than 21 to 45 days are required to properly review a request and provide legal notice to adjacent property owners that is required by State law.

[REDACTED] may overturn local zoning decisions, even if they are otherwise completely acceptable if it believes they are justified by radiation concerns. The FCC's decision cannot be appealed to the courts and the FCC does not need to rely on the reasons a municipality gives for its decision, rather it may substitute its judgment as to what the true reasons were for the municipal action.

Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act. Zoning decision by the Village of Skokie on antenna towers and other requests are made to protect the health, safety and welfare of its citizens. All



October 28, 1997

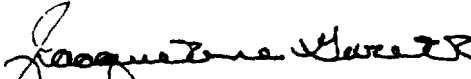
Page 2

decisions are made based on strict findings of fact prescribed by state law. Thus, The proposed FCC rulemaking would violate the Village's local zoning authority and state law.

Please do three things to stop the FCC: First contact new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani asking them to stop these intrusions on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the authority to preempt local zoning authority.

Thank you for your consideration in these matters.

Very truly yours,

  
Jacqueline Gorell  
Mayor

JBG:em

cc: Albert J. Rigoni  
Village Manager

Nori Van Elzen  
Assistant to the Village Manager

North West Municipal Conference  
Illinois Municipal League

VILLAGE OF RANTOUL  
AVIATION AND DEVELOPMENT  
ONE AVIATION CENTER DRIVE, SUITE 101  
RANTOUL, ILLINOIS 61866

Phone: (217) 893-9955

Fax: (217) 893-3970

October 21, 1997

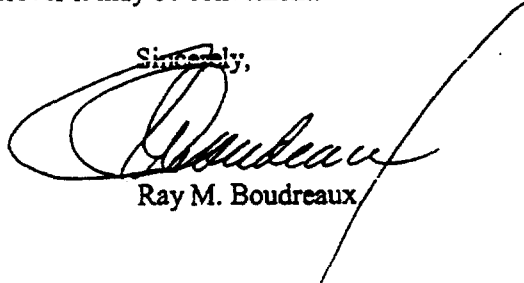
Office of the Secretary  
Federal Communications Commission  
1919 Main Street, N.W.  
Washington, D.C. 20544

IN RE:       Comments On Notice of Proposed Rule  
              Making — MM Docket No. 97-182

Dear Mr. Secretary:

It would be a mistake for the FCC to assume preemptive powers over the states and units of local government with regard to the regulation of communication tower location and height. Not only would you likely face defeat before the federal appellate court if this action were taken, but the FCC could cause serious aviation safety problems. The FAA will not place limits on tower height or placement. So, it is up to local and state airport authorities to regulate these structures. The public demands that there be no impediments to aviation safety. These demands are louder and of greater urgency than the arguments of the digital television and other broadcasters that they be allowed to place their towers wherever it may be convenient.

Sincerely,



Ray M. Boudreaux

cc:   Thomas Ewing  
      Carol Mosely Braun  
      Richard Durbin  
      Timothy V. Johnson

Ray M. Boudreaux, Director

VILLAGE OF



# NORTHBROOK

1225 CEDAR LANE

NORTHBROOK, ILLINOIS 60062-4582

847/272-5050  
FAX 847/272-9760

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Village Clerk

Village Manager  
John M. Novinson

October 22, 1997

977 32 INTERNSI

U. S. Senator Carol Moseley Braun  
230 South Dearborn St., Suite 3900  
Chicago, IL 60604

Dear Senator Moseley Braun:

We are writing to ask your help in dealing with the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

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1. Cellular Towers - Radiation: Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are; need not be bound by the stated reasons given by a municipality; and, doesn't even need to wait until a local planning decision is final before the FCC acts.

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2. Cellular Towers - Moratoria: On a related matter the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.



October 22, 1997

Page 2

3. Radio/TV Towers: Finally, the FCC's proposed rule on radio and TV towers is equally bad. It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request will be automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. The FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

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Very truly yours,

  
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Mark W. Damisch  
Village President

cc: NWMC  
Chamber of Commerce

m:\Novinson\Federal Exemption Letter